

loan and is subject to Agency review and approval.

**§§ 1779.38–1779.41 [Reserved]**

**§ 1779.42 Design and construction requirements.**

The lender will provide the Agency with a written certification at the end of construction that all funds were utilized for authorized purposes. The borrower and the lender will authorize designs and plans based upon the preliminary architectural and engineering reports or plans approved by the lender and concurred in by the Agency. The borrower will take into consideration any lender or Agency comments when the facility is being designed.

(a) *Architectural and engineering practices.* All project facilities must be designed utilizing accepted architectural and engineering practices and must conform to applicable Federal, State, and local codes and requirements. The lender must ensure that the planned project will be completed within the available funds and, once completed, will be suitable for the borrower's needs.

(b) *Construction monitoring.* The lender will monitor the progress of construction and undertake the reviews and inspections necessary to ensure that construction proceeds in accordance with the approved plans, specifications, and contract documents and that funds are used for eligible project costs. The lender must expeditiously report any problems in project development to the Agency.

(c) *Equal employment opportunities.* For all construction contracts in excess of \$10,000, the contractor must comply with Executive Order 11246 (30 FR 12319, 3 CFR, 1964–1965 Comp., p. 339) entitled “Equal Employment Opportunity” as amended and as supplemented by applicable Department of Labor regulations (41 CFR part 60-1). The borrower and lender are responsible for ensuring that the contractor complies with these requirements.

(d) *Americans with Disabilities Act.* WW loans which involve the construction of, or addition to, facilities that accommodate the public and commercial facilities as defined by the Americans with Disabilities Act (42 U.S.C. 12181–

*et seq.*) must comply with that Act. The lender and borrower are responsible for compliance.

(e) *Administrative.* When the Agency reviews the preliminary architectural and engineering reports or plans, they must also consider all applicable Federal laws such as the seismic requirements of Executive Order 12699 (55 FR 835, 3 CFR, 1990 Comp., p. 269), the debarment requirements of 7 CFR part 3017, and the Copeland Anti-Kickback Act (18 U.S.C. 874).

**§ 1779.43 Other Federal, State, and local requirements.**

In addition to the specific requirements of this part and beginning on the date of issuance of the Loan Note Guarantee, proposals for facilities financed in whole or in part with a loan guaranteed by the Agency will be coordinated with all appropriate Federal, State, and local agencies. Borrowers and lenders will be required to comply with any Federal, State, or local laws or regulatory commission rules which are in existence and which affect the project including, but not limited to:

(a) Applicant's authority to design, construct, develop, operate, and maintain the proposed facilities;

(b) Borrowing money, giving security, and raising revenues for repayment;

(c) Land use zoning;

(d) Health, safety, and sanitation standards as well as design and installation standards; and

(e) Protection of the environment and consumer affairs.

**§§ 1779.44–1779.46 [Reserved]**

**§ 1779.47 Economic feasibility requirements.**

All projects financed under the provisions of this section must be based on taxes, assessments, revenues, fees, or other sources of revenues in an amount sufficient to provide for facility operation and maintenance, a reasonable reserve, and debt payment. The lender is responsible for determining the credit quality and economic feasibility of the proposed loan and must address all elements of the credit quality in a written financial feasibility analysis which includes adequacy of equity,

cash flow, security, history, and management capabilities. Financial feasibility reports must take into consideration any interest rate adjustment which may be instituted under the terms of the note. The lender's financial credit analysis may also serve as the feasibility analysis when sufficient evidence is included to determine economic feasibility as well as financial viability. The borrower's consulting engineer may complete the financial feasibility analysis for WW systems. If the facility is used by businesses and the success or failure of the facility is dependent on individual businesses, then the economic viability of those businesses must be assessed.

(a) *Exceptions.* The Agency loan approval official may exempt the lender from the requirement for an independent financial feasibility report (when requested by the borrower and the lender) provided the approval official determines that the financial feasibility analysis prepared by the borrower fairly represents the financial feasibility of the facility and the financial feasibility analysis contains an accurate projection of the usage, revenues, and expenses of the facility.

(b) *Insufficient information.* When the lender or Agency has insufficient information to determine the borrower's repayment ability, an independent feasibility analysis is required.

#### § 1779.48 Collateral.

(a) *Lender responsibility.* The lender is responsible for obtaining and maintaining proper and adequate collateral to protect the interest of the lender, the holder, and the Government.

(b) *Type of collateral.* Collateral must be of such a nature that repayment of the loan is reasonably ensured when considered with the integrity and ability of project management, soundness of the project, and the borrower's prospective earnings. The collateral may include, but is not limited to, the following: General obligation bonds, revenue bonds, pledge of taxes or assessments, assignment of facility revenue, land, easements, rights-of-way, water rights, buildings, machinery, equipment, accounts receivable, contracts, cash, or other accounts or assignments of leases or leasehold interest.

(c) *Separate collateral.* All collateral must secure the entire loan. The lender will not take separate security to secure only the unguaranteed portion of the loan. The lender will not require compensating balances or certificates of deposit as a means of eliminating the lender's exposure on the unguaranteed portion of the loan.

#### §§ 1779.49–1779.51 [Reserved]

#### § 1779.52 Processing.

(a) *Preapplications.* (1) The preapplication package may be submitted either alone or the necessary information may be submitted simultaneously with the application. The preapplication package will contain:

(i) An Application for Federal Assistance on a form provided by the Agency (available in any Agency office);

(ii) State intergovernmental or other type review comments and recommendations for the borrower's project (clearinghouse comments, if applicable);

(iii) Supporting documentation necessary to make an eligibility determination such as financial statements, audits, copies of organizational documents, or existing debt instruments; and

(iv) Documentation of lender eligibility in accordance with § 1779.27.

(2) If the Agency determines that the project may meet requirements and is likely to be funded, the lender must submit a complete application if it has not previously submitted one.

(b) *Applications.* Contents of application package:

(1) Application for Loan and Guarantee on a form prescribed by the Agency (available in any Agency office);

(2) Proposed loan agreement;

(3) Environmental Report. (See RUS Bulletin 1794A-602; this document is available in any Agency State Office or online at <http://www.usda.gov/rus/water/ees/index.htm>);

(4) Preliminary architectural or engineering report (PER);

(5) Cost estimates;

(6) Appraisal reports (as appropriate);

(7) Credit reports (as appropriate);